

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 461 of 1986

with

SPECIAL CIVIL APPLICATION No 546 of 1986.

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DILIP B SHAH

Versus

DIST. DEVL P OFFICER

Appearance:

1. Special Civil Application No. 461 of 1986
Petitioner Served.
Respondent Served.
 2. Special Civil Application No. 546 of 1986.
Petitioner Served.
Respondent Served.
-

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/07/96

ORAL JUDGEMENT

None appears though served. The petitioners herein are clerks serving under the respondent panchayat. The petitioners have claimed benefit of grant of selection grade which was earlier granted to them and was subsequently withdrawn after giving them due opportunity of being heard. Instructions regarding grant of selection grade are issued by the Government from time to time by several resolutions. Under resolution dated 17.1.1976, the Government decided to grant selection grade to person after completion of 3/4th period in the time-scale provided there was vacancy and the Government servant concerned was selected on merit for appointment to the selection grade post. Said condition for grant of selection grade was liberalised under the resolution dated 17th July, 1979 wherein the selection grade was made available after the completion of 3/4th period under the time scale or after the completion of 14 years of service in the given cadre. Again, said terms were further liberalised under the Government Resolution dated 22.10.80 whereby the selection grade was made available to the Government servant concerned after the completion of 2/3rd period in the time scale or completion of 10 years' service in a given cadre. The Government under its resolution dated 28th September, 1976, issued detailed instructions for grant of selection grade in various cadres under the Government. Under its Circular dated 10th July, 1978, clarification was issued directing the authorities concerned not to grant selection grade to a junior employee who may be otherwise entitled to the grant of selection grade in case senior employee has still not become eligible for grant of selection grade. Similar instruction was issued in the Government Circular dated 17.10.1977 also. Said instructions were again emphasized under the Government letter dated 13.10.1981. Thus, essential conditions for grant of selection grade can be culled as;

- (a) employee concerned shall have completed
3/4th period in the time scale or 14
years' service in the cadre;
- (b) after 22nd October, 1980, employee
concerned shall have completed 2/3rd
period in the time scale or 10 years
service in the cadre;
- (c) No employee who is junior in the cadre
shall be granted selection grade in case
senior person in the said cadre has still
not become eligible for grant of

selection grade.

Over and above the aforesaid conditions, availability of vacancy in the selection grade and the selection on merit for appointment to the selection grade are essential for grant of the selection grade.

The District Development Officer issued notice to the petitioners and afforded them an opportunity of being heard. After hearing the petitioners, the District Development Officer held that the earlier order of grant of selection grade was erroneous and the petitioners could not have been granted the selection grade because the petitioners did not meet with the essential conditions for grant of selection grade. It has been pointed out in the affidavit in reply to the petition that on the relevant dates, considering the petitioners' service, on temporary establishment, the petitioner had neither completed 14 years' service nor 10 years' nor the petitioners had completed 3/4th of the period in the time scale or even 2/3rd of the period in the time scale. Further, the petitioners had been transferred to the District Panchayat, Gandhinagar with effect from 1.6.79 and their seniority in the Gandhinagar District Panchayat counted from 1.6.79. Some of the seniors to the petitioners had not become eligible for grant of selection grade and, therefore, in view of the instructions contained in the aforesaid Government Circulars dated 10.7.78 and 10.7.71 and 13.10.81, the petitioner could not have been granted selection grade. The petitioners had not disputed the fact that he had not become eligible for grant of selection grade on that date. The petitioner's claim for grant of selection grade, therefore, requires to be rejected.

The petitioners have further claimed that in view of Rule 57A of the BOMBAY Civil Service Rules, [hereinafter referred to as "BCSRs"], amount of difference in view of grant of selection grade already paid to the petitioners ought not to have been recovered from them. Rule 57A BCSRs deals with a situation where a promotion or appointment of a government servant to a post is found to be or to have been erroneous, on the basis of facts i.e. incorrect seniority, failure to comply with any relevant rules or orders correctly. Sub-Rule (ii) of the said rules provides that when rule or order regulating pay is made with retrospective effect the government servant concerned shall not be called upon to refund the amount of over payment on account of pay and allowances. Obviously, this is a case of erroneous grant of selection grade.

Provisions of rule 57A of the BCSRs, therefore, would not be attracted.

Thus, the action of the respondents in withdrawing selection grade earlier granted to the petitioners cannot be said to be unlawful or erroneous. Petitions are, therefore, rejected. Rule in both these petitions is discharged. Interim relief granted in each of these petitions is vacated. There shall be no order as to costs.

/////